REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BPI FAMILY SAVINGS BANK, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4694

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - - x

12/24

DECISION

This case is a claim for refund in the amount of P112,490.81, as alleged overpaid income tax for 1989.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines.

For the year 1989, Petitioner received rental income for leasing spaces in its Head Office and branch offices, from which Petitioner's lessees withheld the amount of P112,490.81 under the expanded withholding tax regulations. The withheld amount was declared by the Petitioner as rental income in its income tax return for the year 1989 (Exhibit A). The aforesaid income tax return showed that Petitioner allegedly suffered a net loss of P8,286,960.00 for that year. Hence, according to the Petitioner, the entire amount of P112,490.81 under creditable withholding should be refunded to it.

On October 11, 1990, Petitioner filed with Respondent a written claim for refund of the said amount (Exhibit "D" and "D-1").

Without waiting for Respondent to act on the claim and to interrupt the running of the prescriptive period, Petitioner filed the instant petition for review on December 27, 1991, seeking the refund of the aforesaid amount.

The sole issue is whether or not Petitioner is entitled to the refund of P112,491.81 as alleged overpaid income tax for 1989.

Reproduced, hereunder, is the Petitioner's 1989 Corporate Annual Income Tax Return (Exh. A) which shows the following computations:

Income		P1,017,931,831.00
Deductions		<u>1,026,218,791.00</u>
Loss		(P 8,286,960.00)
Tax Due		NIL
Less: Prior Year's		
Excess Credit	P185,001	
Various	112,491	<u>297,492.00</u>
Total Amount Refundable		(P297,492.00)*

* <u>To be applied as tax credit to succeeding Taxable Year</u>.

(Emphasis supplied)

Note should be taken that the amount of P112,491.00 being claimed for refund is part and parcel of P297,492.00 which presumptively was already applied as tax credit to the succeeding taxable year 1990. Such presumption, of course, could have been overturned had the Petitioner submitted its 1990 Corporate Annual Income Tax Return showing that it did not automatically credit the said amount to the said taxable year 1990. Unfortunately, Petitioner failed to submit this vital document. Failure on the part of the Petitioner to sustain its claim is fatal following the time-tested doctrine that claims for refund are construed strictly against claimant (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95).

Thus, to grant Petitioner's refund despite the fact that said amount was applied as tax credit by Petitioner in the taxable year 1990, is detrimental to the interest of the Government as the same is tantamount to granting Petitioner twice the refund of the same amount. (see Resolution, Paseo Realty Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4693, October 21, 1993).

WHEREFORE, in all the foregoing, Petitioner's claim for refund is hereby DENIED and this Petition for Review is DISMISSED for lack of merit.

SO ORDERED.

Quezon City, Metro Manila, December 24, 1993.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO A. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13 Article VII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals